

Forest Service, USDA

§ 223.277

with treaty or other reserved rights related to special forest products to protect the sustainability of special forest products or to otherwise protect National Forest System land. Regional Foresters may only prohibit Tribes with treaty or other reserved rights related to special forest products from harvesting a special forest product to protect public health and safety or to ensure sustainable harvest levels. Regional Foresters will provide a Tribe with treaty or other reserved rights related to special forest products that is prohibited from harvesting a special forest product with written documentation supporting the decision.

§ 223.241 Disposal of seized special forest products.

The Forest Service may dispose of seized special forest products that have been illegally obtained from National Forest System lands by sale or free use. Any sale of such products shall be conducted in accordance with the requirements of this subpart; however, no seized special forest products shall be sold to the person who collected them illegally. The Forest Service shall not dispose of a seized product by sale or free use if that product is:

- (a) Listed or proposed for listing as threatened or endangered under the Endangered Species Act;
- (b) Identified as prohibited for sale or trade under the Convention on International Trade in Endangered Species; or
- (c) Listed on the Regional Forester's sensitive plant list, species of concern list, or species of interest list.

§ 223.242 Supplemental guidance, Memorandum of Agreements and Memorandums of Understanding.

Consistent with subparts G and H of this part, regional foresters may issue supplemental guidance and approve Memorandums of Agreement and Memorandums of Understanding to promote local collaboration, issue resolution, and local implementation of these regulations. Existing Memorandums of Agreement and Memorandums of Understanding related to forest products must be made consistent with subparts G and H within 24 months from December 29, 2008 or those agreements will terminate.

Subpart H—Forest Botanical Products

SOURCE: 73 FR 79386, Dec. 29, 2008, unless otherwise noted.

EFFECTIVE DATE NOTE: At 73 FR 79386, Dec. 29, 2008, subpart H was added, effective Jan. 28, 2009. At 74 FR 5107, Jan. 29, 2009, the amendment was delayed until Mar. 30, 2009. At 74 FR 14049, Mar. 30, 2009, the amendment was further delayed until May 29, 2009. At 74 FR 26091, June 1, 2009, the amendment was delayed indefinitely.

§ 223.275 Establishment of a pilot program.

This subpart governs the Forest Service's pilot program for the disposal of forest botanical products, as authorized by the Department of the Interior and Related Agencies Appropriations Act of 2000, (Pub. L. 106-113, Div. B, sec. 1000(a)(3), 113 Stat. 135 (enacting into law sec. 339 of Title III of H.R. 3423)), as amended in 2004 by Section 335 of Public Law 108-108. The pilot program shall be in effect through September 30, 2009, unless extended or made permanent by Congress.

§ 223.276 Applicability.

This subpart applies to the sale and free use of forest botanical products, as defined in § 223.277, from National Forest System lands, until September 30, 2009, unless the pilot program is extended or made permanent by Congress. The Forest Service shall dispose of forest botanical products in accordance with the procedures set forth in 36 CFR part 223 Subpart G, subject to the requirements of this subpart.

§ 223.277 Forest botanical products definition.

As used in this subpart, the following term shall mean:

Forest botanical products are: Naturally occurring special forest products, including, but not limited to, bark, berries, boughs, bryophytes, bulbs, burls, cones, ferns, fungi (including mushrooms), forbs, grasses, mosses, nuts, pine straw, roots, sedges, seeds, shrubs, transplants, tree sap, and wildflowers. Forest botanical products are not animals, animal parts, Christmas trees, fence material, firewood, insects, mine props, minerals, posts and

§ 223.278

poles, rails, rocks, shingle and shake bolts, water, worms, and soil.

§ 223.278 Sale of forest botanical products and collection of fees.

The responsible Forest Officer shall ensure that the sale price of any forest botanical product includes a portion of the product's fair market value and a portion of the costs incurred by the Department of Agriculture associated with granting, modifying, or monitoring the authorization for harvest of forest botanical products, including the costs of any environmental or other analysis. The fair market value of forest botanical products shall be equal to the appraised value determined in accordance with § 223.222. The sum of the portions of fair market value and costs making up the sale price must be greater than or equal to the forest botanical product's fair market value. All other aspects related to the sale of forest botanical products shall be governed under 36 CFR part 223 Subpart G.

§ 223.279 Personal use.

(a) *Personal use.* A person may harvest forest botanical products from National Forest Systems lands free of charge for personal, non-commercial use up to the personal-use harvest level.

(b) *Personal use harvest level.* In conjunction with determining sustainable harvest levels under § 223.219, the responsible Forest Officer shall determine personal-use harvest levels for specific forest botanical products, which shall be equal to the amount or quantity authorized for free use under § 223.239(a).

(c) *Personal-use permit requirement.* A person seeking personal use of a forest botanical product must comply with the free-use permitting requirements of § 223.239.

§ 223.280 Waiver of fees and/or fair market value.

The Forest Service waives the collection of fees otherwise required pursuant to § 223.278 of this subpart as follows:

(a) For all federally-recognized Tribes seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes. Such pur-

36 CFR Ch. II (7–1–11 Edition)

poses must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in § 223.240 of subpart G; and

(b) For Tribes with treaty or other reserved rights seeking to harvest forest botanical products for cultural, ceremonial, and/or traditional purposes in accordance with such treaty or other reserved rights. Such purposes must be non-commercial, and any such harvest may be conditioned or denied for reasons similar to those provided in § 223.240 of subpart G; and

(c) When a Regional Forester or Forest Supervisor, having proper authorization from the Chief, makes a written determination that:

(1) The harvest of a specified forest botanical product will facilitate non-commercial scientific research such as species propagation or sustainability; or

(2) A forest botanical product is salvage because other management activities will destroy or damage the product.

§ 223.281 Monitoring and revising sustainable harvest levels.

The Forest Service shall monitor and revise sustainable harvest levels for forest botanical products in accordance with § 223.219 of subpart G.

§ 223.282 Deposit and expenditure of collected fees.

(a) Funds collected under the pilot program for the harvest and sale of forest botanical products shall be deposited into a special account in the Treasury of the United States. These funds shall be available for expenditure at National Forests or National Grasslands where the funds were collected until September 30, 2010, unless the program is extended.

(b) Funds deposited into the special account specified in paragraph (a) of this section shall be expended at a National Forest or National Grassland in an amount equal to the fees collected at that unit and shall be used to pay for the costs of:

(1) Conducting inventories of forest botanical products;

(2) Determining, monitoring, and revising sustainable harvest levels for forest botanical products;